SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 444.

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,

vs.

EVERETT L. SIMPSON.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

INDEX.

129379—19

1 *Pleas in the District Court of the United States for the District of Colorado sitting at Denver.*

Be it remembered that heretofore, and on, to wit, the twenty-seventh day of February, A. D. 1919, the same being one of the regular juridical days of the November term, A. D. 1918, of said court, present, The Honorable Robert E. Lewis, district judge, the following proceeding was had and entered of record in said court, to wit:

In the matter of the grand jury—indictments returned.

At this day come the members of the grand jury, heretofore duly impaneled and sworn as grand jurors, and return into court now here the following true bills of indictment, and not true bills of indictment, to wit:

* * * * * * *

THE UNITED STATES OF AMERICA
vs.
EVERETT L. SIMPSON.

Indictment: Transporting intoxicating liquor by interstate commerce. 3168.

(Endorsed:) A true bill.
(Signed) J. F. WELBORN, *Foreman.*

And thereupon, it is ordered by the court that the said defendant be let to bail before an United States Commissioner in the sum of two hundred fifty dollars ($250.00), for his appearance in this court from day to day and from term to term to answer unto the indictment herein.

* * * * * * *

2 And the said indictment is in words and figures as follows, to wit:

Filed Feb. 27, 1919. Charles W. Bishop, clerk.

3168.

UNITED STATES OF AMERICA,
District of Colorado, ss:

In the District Court of the United States within and for the District of Colorado, at the November term thereof, A. D. 1918, at Denver, Colorado.

The grand jurors of the United States of America, within and for the District of Colorado, good and lawful men, duly selected, impaneled, sworn and charged, on their oaths present:

That Everett L. Simpson, late of the city and county of Denver, State of Colorado, on, to wit, August 25, 1917, in violation of section 5 of the act of Congress approved March 3, 1917, did knowingly, willfully, and unlawfully cause intoxicating liquors, to wit five quarts of whiskey, to be transported in interstate commerce from the city of Cheyenne, in the State of Wyoming, into the city and county

of Denver, State of Colorado, Colorado being a State the laws of which then prohibited the manufacture and sale therein of intoxicating liquors for beverage purposes, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

SECOND COUNT.

3 And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

That said Everett L. Simpson, on, to wit, August 25, 1917, in violation of section 5 of the act of Congress approved March 3, 1917, did knowingly, willfully, and unlawfully cause intoxicating liquors, to wit, five quarts of whiskey, to be transported in interstate commerce from the city of Cheyenne, in the State of Wyoming, into the city and county of Denver, State of Colorado; that is to say, he, the said Everett L. Simpson, caused said liquor as aforesaid to be transported in an automobile from said city of Cheyenne into the said city and county of Denver for other than scientific, sacramental, medicinal, or mechanical purposes, Colorado being a State the laws of which then prohibited the manufacture and sale therein of intoxicating liquors for beverage purposes, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

THIRD COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

That said Everett L. Simpson, on, to wit, August 25, 1917, in violation of section 5 of the act of Congress approved March 3, 1917, did knowingly, willfully, and unlawfully cause intoxicating liquors, to wit, five quarts of whiskey, to be transported in interstate commerce from the city of Cheyenne, in the State of Wyoming, into the city and county of Denver, State of Colorado; that

4 is to say, he, the said Everett L. Simpson, prior to the time of such transportation of said liquor, then and there being in said city of Cheyenne, bought, paid for, and owned said liquor and thereafter himself, as such owner, transported the same from said city of Cheyenne into said city ond county of Denver, as aforesaid, in an automobile, then and there owned by him, for his own personal use, other than for scientific, sacramental, medicinal, or mechanical purposes, Colorado being a State the laws of which then prohibited the manufacture and sale therein of intoxicating liquors for beverage purposes, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

HARRY B. TEDROW,
United States Attorney for the District of Colorado.

(Indorsed:) No. —— United States District Court, District of Colorado. The United States of America v. Everett L. Simpson. Indictment: Transporting liquor in interstate commerce. Violation §5, act of March 3, 1917. A true bill, J. F. Welborn, foreman. Bail, $————. Harry B. Tedrow, U. S. Attorney.

Filed Mar. 13, 1919. Charles W. Bishop, clerk.

UNITED STATES OF AMERICA,
District of Colorado, ss:

In the District Court of the United States for the District of Colorado. No. 3168.

UNITED STATES OF AMERICA,
vs.
EVERETT L. SIMPSON, DEFENDANT. } Demurrer to Indictment.

Comes now the above-named defendant, by his attorney, and demurs to the indictment of the grand jury heretofore and on, to wit, February 25, 1919, returned into said court against him, and for grounds of his said demurrer to the first count of said indictment says:

First: That said first count does not state sufficient facts to constitute an offense against the laws of the United States.

Second: That said first count in particular does not state facts sufficient to constitute an offense against section 5 of the act of March 3, 1917, entitled "An act making appropriations for the service of the Post Office Department for the fiscal year ending June thirtieth, nineteen hundred and eighteen, and for other purposes," in this, that said first count, does not allege that the intoxicating liquors therein referred to as transported from Cheyenne to Denver were not, when so transported, intended for scientific, sacramental, medicinal, or mechanical purposes.

And for grounds of his said demurrer to the second count of said indictment says:

First: That said second count does not state sufficient facts to constitute an offense against the laws of the United States.

Second: That said second count in particular does not state
6 facts sufficient to constitute an offense against section 5 of the act of March 3, 1917, hereinabove referred to in this, that said second count alleges that the transportation of intoxicating liquors from Cheyenne to Denver was made in an automobile, whereas such transportation by automobile is and was lawful and not in contravention of the said act.

And for grounds of his said demurrer to the third count of said indictment says:

First: That said third count does not state sufficient facts to constitute an offense against the laws of the United States.

Second: That the said third count in particular does not state facts sufficient to constitute an offense against section 5 of said act of March 3, 1917, in this, that the allegations thereof show that the intoxicating liquors so transported were not in interstate or in any commerce, but when so transported were conveyed by said Simpson personally in his own automobile for his own personal use.

Wherefore, the said defendant prays judgment that he be discharged and dismissed.

EDMUND J. CHURCHILL,
Attorney for Everett L. Simpson, Defendant.

Sixty-seventh Day, November Term, Thursday, April 24th, A. D. 1919.

Present: The Honorable Robert E. Lewis, district judge, and other officers as noted on the eighteenth day of January, A. D. 1919.

7 UNITED STATES OF AMERICA *vs.* EVERETT L. SIMPSON. } Indictment for transporting intoxicating liquor by interstate commerce. 3168.

The demurrer to the indictment herein having heretofore come on to be heard, and having been argued by Harry B. Tedrow, esquire, district attorney, and by Edmund J. Churchill, esquire, attorney for defendant, and having been taken under advisement. And the court having considered the same and being now fully advised in the premises,

It seemeth to the court now here that the first and second counts of the indictment herein are sufficient in law to be answered unto, and that the third count of the indictment herein is not sufficient in law to be answered unto. And so the said demurrer is hereby overruled as to the first and second counts and sustained as to the third count of the indictment herein.

Ninth day, May term, Friday, May 23d, A. D. 1919.

Present: The Honorable Robert E. Lewis, district judge, and other officers as noted on the sixth day of May, A. D. 1919.

And before the Honorable Robert E. Lewis, district judge, the following proceeding was had:

UNITED STATES OF AMERICA *vs.* EVERETT L. SIMPSON. } Indictment for transporting intoxicating liquor by interstate commerce. 3168.

At this day comes Harry B. Tedrow, esquire, district attorney, who prosecutes the pleas of the United States in this behalf, and
8. saith he will no further prosecute the first count of the indictment herein against the defendant; and saith that he will no further prosecute the second count of the indictment herein against the defendant.

Wherefore it is considered by the court that the said defendant of and from the premises in this said indictment specified be discharged and go hence hereof without day.

3168.

In the District Court of the United States,
Within and for the District of Colorado.

Filed May 23, 1919. Charles W. Bishop, clerk.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
EVERETT L. SIMPSON, DEFENDANT. } No. 3168.

Assignment of errors.

Now comes the above-named plaintiff in error, The United States of America, and files herewith its petition for a writ of error, and says that there are errors in the records and proceedings of the above-entitled case, and for the purpose of having the same reviewed by the Supreme Court of the United States of America makes the following assignment of errors:

The District Court of the United States for the District of Colorado erred in holding and deciding that the demurrer of the defendant in error, Everett L. Simpson, should be sustained, and

9 further erred in rendering judgment in favor of the defendant in error and against the plaintiff in error, pursuant to its ruling upon said demurrer.

Said errors are more particularly set forth as follows:

Said District Court of the United States for the District of Colorado erred in holding and deciding:

First. That the court erred in its decision and judgment sustaining the demurrer to the third count of the indictment, for the reason that the same is sufficient in law, and the court thus erred in its construction of sec. 5 of the act of March 3, 1917 (commonly called the Reed-Jones amendment), on which said count was founded.

Second. The court erred in sustaining the said demurrer and ordering that the defendant be discharged.

For which errors the plaintiff in error, The United States of America, prays that said orders and judgments of the District Court of the United States for the District of Colorado, rendered upon April 24, 1919, and May 23, 1919, be reversed, and the said court directed to overrule the said demurrer to said indictment and for costs.

HARRY B. TEDROW,
United States Attorney for the District of Colorado.

HBT/MN. 5/27/19.

10

3168.

UNITED STATES OF AMERICA,
District of Colorado, ss:

In the District Court of the United States for the District of Colorado, sitting at Denver.

Filed May 23, 1919. Charles W. Bishop, clerk.

THE UNITED STATES OF AMERICA, PLAINTIFF,
versus
EVERETT L. SIMPSON, DEFENDANT. } No. 3168.

The clerk will issue a complete transcript in the above-entitled cause for record upon writ of error to the Supreme Court of the United States.

HARRY B. TEDROW,
Attorney for Plaintiff.

To Charles W. Bishop, clerk.

Denver, Colorado, May 23, 1919.

11 Filed May 23, 1919. Charles W. Bishop, clerk.

3168.

UNITED STATES OF AMERICA, ss:

The President of the United States to the honorable the judge of the District Court of the United States for the District of Colorado, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court before you, or some of you, between The United States of America and Everett L. Simpson a manifest error hath happened, to the great damage of the said The United States of America as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should

12 be done.

Witness the Honorable Edward D. White, Chief Justice of the United States and the seal of the District Court of the United

States for the District of Colorado at Denver in said district this twenty-third day of May, A. D. 1919, and of the independence of the United States of America the 143d year.

[SEAL.] CHARLES W. BISHOP,
Clerk United States District Court, District of Colorado.

Allowed by
ROBT. E. LEWIS,
District Judge.

UNITED STATES OF AMERICA,
District of Colorado, ss:

In obedience to the command of the within writ, I do hereby transmit to the Supreme Court of the United States a transcript of the record and proceedings in the above-entitled case with all things appertaining to the same.

In testimony to the above and foregoing I do hereunto sign my name and affix the seal of the District Court of the United States for the District of Colorado at Denver, in said district, this fourth day of June, A. D. 1919.

[SEAL] CHARLES W. BISHOP, *Clerk.*

13 Filed June 2, 1919. Charles W. Bishop, clerk.

3168.

UNITED STATES OF AMERICA, *ss:*
To Everett L. Simpson, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the District of Colorado sitting at Denver, wherein The United States of America is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Robert E. Lewis, judge of the District Court of the United States for the District of Colorado, this twenty-third day of May, in the year of our Lord one thousand nine hundred and nineteen, at Denver in said District.

ROBT. E. LEWIS,
District Judge.

On this day of , in the year of our Lord one thousand nine hundred and , personally appeared before me, the subscriber, and makes oath

14 that he delivered a true copy of the within citation to

Sworn to and subscribed the day of , A. D. 1919.

Service of the above and foregoing citation is hereby accepted this thirty-first day of May, A. D. 1919.

EDMUND J. CHURCHILL,
Attorney for Defendant in Error.

15 UNITED STATES OF AMERICA,
District of Colorado, ss:

I, Charles W. Bishop, clerk of the district court of the United States for the district of Colorado, do hereby certify the above and foregoing pages numbered from one (1) to fourteen (14), both inclusive, to be a true, perfect, and complete transcript and copy of the pleadings and other matters set forth in the praecipe filed herein, together with a true copy of such praecipe, heretofore filed or entered of record in said court and in a certain case lately in said court pending, wherein The United States of America was plaintiff and Everett L. Simpson was defendant, as fully and completely as the same still remain on file and of record in my office at Denver.

And I further certify that I have annexed to and transmit herewith a copy of all opinions heretofore handed down and filed in said case.

In testimony to the above, I do hereunto sign my name and affix the seal of said court, at the city and county of Denver, in said district, this fourth day of June, A. D. 1919.

[SEAL.] CHARLES W. BISHOP, *Clerk.*

16 Filed Apr. 24, 1919. Charles W. Bishop, clerk.

UNITED STATES OF AMERICA,
District of Colorado, ss:

In the District Court of the United States for the District of Colorado.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
EVERETT L. SIMPSON, DEFENDANT. } No. 3168.

This is a demurrer to an indictment charging the defendant with the violation of section 5 of the Act of March 3, 1917 (Reed amendment). The three counts charge the same offense, each putting it in a different way. Each charges that the defendant, on August 25, 1917, did unlawfully cause five quarts of whiskey to be transported in interstate commerce from Cheyenne, Wyoming, to Denver, Colorado, the laws of the latter State prohibiting the manufacture and sale therein of intoxicating liquor for beverage purposes. The second count adds that the transportation was in an automobile, and that the liquor was to be used for other than scientific, sacramental, medicinal, or mechanical purposes; and the third adds that

prior to the time of transportation the defendant was in Cheyenne, bought, paid for, and owned the liquor, and thereafter himself, as such owner, transported same from Cheyenne to Denver in an automobile then and there owned by him, for his own personal use other than for scientific, sacramental, medicinal, or mechanical purposes.

The demurrer to the first count is rested on the ground that the exceptional uses for which the liquor may be brought in is
17 not negatived. The statute reads thus: "Whoever shall order, purchase or cause intoxicating liquors to be transported in interstate commerce, except for scientific, sacramental, medicinal, or mechanical purposes," etc. The permissible purposes are matters of defense. United States vs. Cook, 17 Wallace, 168; Nelson vs. United States, 30 Fed., 112, 116; Schelp vs. United States, 81 Fed., 694; United States vs. Cook, 36 Fed., 896; United States vs. Stone, 49 Fed., 848; the Mary Merritt Fed. Cas., No. 9222.

It is said that the second count is bad because transportation by automobile is not a violation of the act. An automobile may be used so as to become a common carrier in interstate commerce.

The district attorney stated in argument that the details of the transaction were set out in the third count for the purpose of testing, in the shortest and most inexpensive way, whether the bringing in of liquor in the manner stated in that count is a violation. It is difficult to believe that the innumerable daily transactions, noncommercial in character and privately carried on across State lines, come within the reach of national regulatory power given by the Constistitution; and yet I confess the broad language in some of the cases does not leave me entirely free from doubt. After all, my conclusion is reached from what is said about the Uncle Sam Oil Company in the Pipe Line cases, 234 U. S., 548, 562. The facts there consid-
ered are apt. Justice Holmes, for the majority, said: "There
18 remains to be considered only the Uncle Sam Oil Company. This company has a refinery in Kansas and oil wells in Oklahoma with pipe line connecting the two, which it has used for the sole purpose of conducting oil from its own wells to its own refinery. It would be a perversion of language, considering the sense in which it is used in the statute, to say that a man was engaged in the transportation of water whenever he pumped a pail of water from his well to his house. So as to oil. When, as in this case, a company is merely drawing oil from its own wells across a State line to its own refinery for its own use, and that is all, we do not regard it as falling within the description of the act, the transportation being merely an incident to use at the end." Of course the prime inquiry there was whether the Uncle Sam Oil Company was a common carrier: but to be a common carrier within the act it was necessary that it be found to be engaged in transportation in interstate commerce, and the transportation in interstate commerce was the part of the inquiry to which Justice Holmes addressed himself. That this is so is demonstrated by the Chief Justice: "The view which

leads the court to exclude it (from the operation of the act) is that the company was not engaged in transportation under the statute, a conclusion to which I do not assent. The facts are these: That company owns wells in one State from which it has pipe lines to its refinery in another State, and pumps its own oil through said pipe lines to its refinery, *and the product, of course, when reduced at the refinery, passes into the markets of consumption* (italics mine).

19 It seems to me that the business thus carried on is transportation in interstate commerce within the statute." I take it that the fact stated by the Chief Jusice (in italics) was a necessary element to the conclusion he reached. That is to say, he did not agree with the majority that the transportation was "merely an incident to use at the end," but that the transportation from Oklahoma to Kansas, the refining of the oil in Kansas, and the passing of the refined oils into the markets of consumption should be viewed as one transaction, and that the three separate acts dealing with the subject constituted transportation in interstate commerce. Kelly vs. Rhoads, 188 U. S., 1.

Dan Hill's case, recently decided by the Supreme Court, is not in point as I view it. That also was a prosecution for violation of the Reed amendment; but the indictment charged that Hill, while in Kentucky, boarded a trolley car being operated by a common carrier corporation engaged in interstate commerce, and by means thereof did cause himself and the said intoxicating liquor, then upon his person, to be carried and transported in interstate commerce into the State of West Virginia. The charge was exactly within the statute—"cause intoxicating liquors to be transported in interstate commerce." Hill caused the liquor to be transported in interstate commerce, in the manner charged in the indictment, as much so as if he had separately intrusted the liquor to the common carrier

20 for transportation.

The demurrer is overruled as to the first and second counts, and sustained as to the third count. It will be so ordered.

ROBT. E. LEWIS, *District Judge.*

APRIL 23, 1919.

UNITED STATES OF AMERICA,
District of Colorado, ss:

I, Charles W. Bishop, clerk of the District Court of the United States for the District of Colorado, do hereby certify the above and foregoing pages numbered from sixteen (16) to twenty (20), both inclusive, to be a true, perfect, and complete transcript and copy of all opinions heretofore handed down and filed in said court and in a certain case lately in said court pending, wherein The United States of America was plaintiff and Everett L. Simpson was defendant, as fully and completely as the same still remain on file in my office at Denver.

In testimony to the above I do hereunto sign my name and affix the seal of said court at the city and county of Denver in said district, this fourth day of June, A. D. 1919.

[SEAL] CHARLES W. BISHOP, *Clerk.*

(Endorsement or cover:) File No. 27,199. Colorado D. C. U. S. Term No. 444. The United States of America, plaintiff in error, vs. Everett L. Simpson. Filed July 7, 1919. File No. 27,199.

○

In the Supreme Court of the United States.

OCTOBER TERM, 1919.

THE UNITED STATES OF AMERICA, plaintiff in error, v. EVERETT L. SIMPSON. } No. 444.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

MOTION BY THE UNITED STATES TO ADVANCE.

Comes now the Solicitor General on behalf of the United States and in accordance with the provisions of the Criminal Appeals Act, 34 Stat. 1246, respectfully moves the advancement of the above entitled cause for hearing during the present term.

This is a writ of error to review a judgment sustaining a demurrer to the third count of an indictment charging defendant in error with the purchase of intoxicating liquors in the city of Cheyenne, Wyoming, and the transportation thereof from Cheyenne, Wyoming, in an automobile by him owned and operated, into the city of Denver, Colorado, for his personal use, other than for scien-

tific, sacramental, medicinal, or mechanical purposes, the laws of the State of Colorado then prohibiting the manufacture and sale therein of intoxicating liquors for beverage purposes, in violation of the Reed Amendment of 1917 (Sec. 5 of the Act of March 3, 1917, 39 Stat. 1058, 1069). The court below was of the opinion that transportation of the liquors in the manner and under the circumstances set forth was not a transportation in interstate commerce.

Notice of this motion has been served on opposing counsel.

ALEX. C. KING,
Solicitor General.

JANUARY, 1920.

O

In the Supreme Court of the United States.

OCTOBER TERM, 1919.

THE UNITED STATES, PLAINTIFF IN ERROR, v. EVERETT L. SIMPSON. } No. 444.

IN ERROR TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO.

BRIEF FOR THE UNITED STATES.

This case is here on writ of error to review the action of the District Court in sustaining a demurrer to an indictment charging an offense under the Reed amendment (39 Stat., c. 162, pp. 1058, 1069), which makes it unlawful to cause intoxicating liquors to be transported in interstate commerce, except for scientific, sacramental, medicinal, and mechanical purposes, into any State or Territory the laws of which State or Territory prohibit the manufacture or sale therein of intoxicating liquors for beverage purposes.

THE INDICTMENT.

The indictment contained three counts, each designed to secure a determination of a single question about which there was a difference of opinion.

The first count was intended to test the question as to whether the Government must allege and prove

that the liquors transported were not intended for scientific, sacramental, medicinal, or mechanical purposes. It therefore simply charged, in general language, that the defendant had caused 5 quarts of whisky to be transported in interstate commerce from the State of Wyoming into the State of Colorado, and that the laws of the latter State prohibited the manufacture and sale of intoxicating liquors for beverage purposes.

The second count was intended to test the question as to whether the transportation by automobile was transportation in interstate commerce within the terms of the act, and hence it was charged that the liquor in question was transported in an automobile.

The third count was intended to test the question as to whether transportation in an automobile by the owner of the liquor himself was transportation in interstate commerce within the meaning of the act, and it was accordingly charged that the defendant, having purchased the liquor in question in the State of Wyoming, transported the same in his own automobile and for his own personal use, other than scientific, sacramental, medicinal, or mechanical, into the State of Colorado.

RULING OF THE COURT BELOW.

The court held that each of the first and second counts charged an offense under the law, and overruled the demurrer as to them. The demurrer as to the third count, however, was sustained.

Since the actual facts had been charged in detail in the third count, it would have been useless to go

to trial on the first and second counts, in view of the ruling of the court. The United States, therefore, sued out a writ of error to review the action of the court in sustaining the demurrer as to the third count.

QUESTION INVOLVED.

The sole question involved is whether one who purchases liquor in one State for his personal use and himself transports it into a dry State has caused liquor to be transported in violation of the Reed amendment.

BRIEF.

This case is clearly ruled by *United States* v. *Dan Hill*, 248 U. S. 420. In that case the court held that one who purchased a quart of whisky in Kentucky and carried it on his person into the State of West Virginia for his own personal use as a beverage violated the Reed amendment. The only difference between the two cases is that in the *Dan Hill* case the defendent carried the liquor on his person while riding as a passenger on a common carrier, while in this case the defendant transported the liquor in his own automobile. The learned district judge thought that this difference distinguished the two cases, but in the *Hill* case the fact that Hill was riding as a passenger of an interstate carrier at the time he personally transported the liquor was not treated as being in any way important. The court said, speaking of the decision of the court below:

> The ground of decision, as appears by the opinion of the District Court, was that the phrase "transported in interstate commerce,"

as used in the act, was intended to mean and apply only to liquor transported for commercial purposes.

This question alone is considered in the opinion. The judgment in the present case rests solely upon the idea that, in order to be transportation in interstate commerce, transportation must be by common carrier. But transportation, in order to constitute interstate commerce, need not be by common carrier, and may consist of the transportation by one of his own goods.

Railroad Company v. *Husen*, 95 U. S. 465, 469–70.

Kirmeyer v. *Kansas*, 236 U. S. 568, 572.

Kelley v. *Rhoads*, 188 U. S. 1.

Pipe Line Cases, 234 U. S. 548, 560.

Rearick v. *Pennsylvania*, 203 U. S. 507, 512.

It is respectfully submitted that the judgment of the District Court was erroneous and should be reversed.

WILLIAM L. FRIERSON,
Assistant Attorney General.

FEBRUARY, 1920.

○

UNITED STATES *v.* SIMPSON.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

No. 444. Submitted March 5, 1920.—Decided April 19, 1920.

The transportation by their owner of five quarts of whiskey for his personal use, in his own automobile, into a State whose laws prohibit the manufacture or sale of intoxicating liquors for beverage purposes, is transportation in interstate commerce and violates the Reed Amendment if the liquor is not intended for any of the purposes therein excepted. P. 466.

257 Fed. Rep. 860, reversed.

THE case is stated in the opinion.

Mr. Assistant Attorney General Frierson for the United States:

This case is ruled by *United States* v. *Hill*, 248 U. S. 420.

The judgment in the present case rests solely upon the idea that, in order to be transportation in interstate commerce, transportation must be by common carrier. But transportation, in order to constitute interstate commerce, need not be by common carrier, and may be transportation by the owner of the goods. *Railroad Company* v. *Husen*, 95 U. S. 465, 469–70; *Kirmeyer* v. *Kansas*, 236 U. S. 568, 572; *Kelley* v. *Rhoads*, 188 U. S. 1; *Pipe Line Cases*, 234 U. S. 548, 560; *Rearick* v. *Pennsylvania*, 203 U. S. 507, 512.

No appearance for defendant in error.

MR. JUSTICE VAN DEVANTER delivered the opinion of the court.

This is an indictment under § 5 of the Act of March 3, 1917, known as the Reed Amendment, c. 162, 39 Stat. 1069, which declares that "whoever shall . . . cause intoxicating liquors to be transported in interstate commerce, except for scientific, sacramental, medicinal, and mechanical purposes, into any State . . . the laws of which . . . prohibit the manufacture or sale therein of intoxicating liquors for beverage purposes shall be punished," etc.; and the question for decision is whether the statute was applicable where the liquor—five quarts of whiskey—was transported by its owner in his own automobile and was for his personal use, and not for an excepted purpose. The District Court answered the question in the negative and on that ground sustained a demurrer to the third count, which is all that is here in question, and discharged the accused. 257 Fed. Rep. 860.

We think the question should have been answered the other way. The evil against which the statute was directed was the introduction of intoxicating liquor into a prohibition State from another State for purposes other than those specially excepted,—a matter which Congress could and the States could not control. *Danciger* v. *Cooley*, 248 U. S. 319, 323. The introduction could be effected only through transportation, and whether this took one form or another it was transportation in interstate commerce. *Kelley* v. *Rhoads*, 188 U. S. 1; *United States* v. *Chavez*, 228 U. S. 525, 532–533; *United States* v. *Mesa*, 228 U. S. 533; *Pipe Line Cases*, 234 U. S. 548, 560; *United States* v. *Hill*, 248 U. S. 420. The statute makes no distinction between different modes of transportation and we think it was intended to include them all, that being

the natural import of its words. Had Congress intended to confine it to transportation by railroads and other common carriers it well may be assumed that other words appropriate to the expression of that intention would have been used. And it also may be assumed that Congress foresaw that if the statute were thus confined it could be so readily and extensively evaded by the use of automobiles, auto-trucks and other private vehicles that it would not be of much practical benefit. See *Kirmeyer* v. *Kansas*, 236 U. S. 568. At all events, we perceive no reason for rejecting the natural import of its words and holding that it was confined to transportation for hire or by public carriers.

The published decisions show that a number of the federal courts have regarded the statute as embracing transportation by automobile, and have applied it in cases where the transportation was personal and private, as here. *Ex parte Westbrook*, 250 Fed. Rep. 636; *Malcolm* v. *United States*, 256 Fed. Rep. 363; *Jones* v. *United States*, 259 Fed. Rep. 104; *Berryman* v. *United States*, 259 Fed. Rep. 208.

That the liquor was intended for the personal use of the person transporting it is not material, so long as it was not for any of the purposes specially excepted. This was settled in *United States* v. *Hill*, *supra*.

We conclude that the District Court erred in construing the statute and sustaining the demurrer.

Judgment reversed.

MR. JUSTICE CLARKE, dissenting.

The indictment in this case charges that the defendant, being in the City of Cheyenne, Wyoming, "bought, paid for and owned" five quarts of whiskey and thereafter, in his own automobile, driven by himself, transported it into the City of Denver, Colorado, intending to there devote it to his own personal use. Colorado prohibited the manu-

facture and sale therein of intoxicating liquor for beverage purposes. The court decides that this liquor was unlawfully "transported in interstate commerce," from Wyoming into Colorado within the meaning of the Act of Congress of March 3, 1917 (39 Stat. 1069).

With this conclusion I cannot agree.

By early (*Gibbons* v. *Ogden*, 9 Wheat. 1, 193) and by recent decisions (*Second Employers' Liability Cases*, 223 U. S. 1, 46) of this court and by the latest authoritative dictionaries, interstate commerce, in the constitutional sense, is defined to mean commercial, business, intercourse—including the transportation of passengers and property—carried on between the inhabitants of two or more of the United States,—especially (we are dealing here with property) the exchange, buying or selling of commodities, of merchandise, on a large scale between the inhabitants of different States. The liquor involved in this case, after it was purchased and while it was being held for the personal use of the defendant, was, certainly, withdrawn from trade or commerce as thus defined—it was no longer in the channels of commerce, of trade or of business of any kind—and when it was carried by its owner, for his personal use, across a state line, in my judgment it was not moved or transported in interstate commerce, within the scope of the act of Congress relied upon or of any legislation which Congress had the constitutional power to enact with respect to it at the time the Reed Amendment was approved. The grant of power to Congress is over commerce,—not over isolated movements of small amounts of private property, by private persons for their personal use.

I think the *Hill Case*, 248 U. S. 420, was wrongly decided and that the judgment of the District Court in this case should be affirmed.